THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on :08.03.2007

+ **WP(C) No.695/2005**

SH. DEVINDER K. JAIN ...Petitioner

- versus -

UNION OF INDIA & OTHERS ...Respondents

Advocates who appeared in this case:

For the Petitioner	:	Mr Y.K. Kapur
For the Respondent Nos.1 & 2	:	Mr Ashish Rana for Mr Rajeev Mehra
For the Respondent No.3.	:	Mr Rakesh. Tiku

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes

2. To be referred to the Reporter or not ? Yes

3. Whether the judgment should be reported in Digest ? Yes

BADAR DURREZ AHMED, J (ORAL)

1. This petition is directed against the approval granted by the Regional Director, Department of Company Affairs, Ministry of Finance, Government of India under Section 224 (7) of the Companies Act, 1956 (hereinafter referred to as 'the said Act') for removal of the statutory auditors [M/s Devinder K. Jain and Associates, Chartered Accountants, New Delhi] in respect of the company KEW Precision Parts (P) Ltd. The grievance of the petitioner is that this removal of the statutory auditors of the company was not in accordance with law. His submission was that before removal, the approval of the Central Government was necessary, whereas in the present case, the

decision for removal was taken prior to the approval taken from the Central Government. He placed reliance on a decision of this court in the case of ***Basant Ram & Sons and Another v. Union of India and Others*****: 2000 (4) Comp LJ 55 (Delhi)**.

2. The learned counsel appearing on behalf of the company submitted that the procedure prescribed under Section 224 (7) of the said Act was followed in letter and spirit for removal of the petitioner as the statutory auditor of the company. He submitted that in the Board meeting held on 12.07.2004, a resolution was passed indicating the decision of the Board to remove the petitioner as the statutory auditor inasmuch as they had lost confidence in them. On 29.07.2004, the company moved an application before the Regional Director for the approval of the Central Government. The approval was granted by virtue of the impugned order dated 25.10.2004 passed by the Central Government acting through the said Regional Director on the ground that the company had lost faith and confidence in the statutory auditors and, therefore, they were permitted to proceed with the removal of the said auditors provided the same was passed in the General Meeting. Thereafter, a General Meeting was held on 27.10.2004, whereby the statutory auditor was removed. So, according to the learned counsel for the respondent No.3, the procedure of obtaining prior approval of the Central Government was followed and thereafter the statutory auditor was removed at a General Meeting held on

27.10.2004.

3. Considering the rival contentions of the parties, I am inclined to agree with the submissions made on behalf of the respondent No.3. First of all, the decision to remove the statutory auditors which was taken on 12.07.2004 was not taken in the General Meeting, but by the Board of Directors. This decision had no effect in law other than initiating the process of removal. After the Board decided on 12.07.2004 to proceed with the removal of the auditor, the company moved an application on 29.07.2004 before the Central Government seeking its approval under section 224 (7) of the said Act. This approval was required to be taken prior to the removal of the statutory auditors in the General Meeting. The approval was granted and it is only after the grant of such approval that the petitioner was removed as the statutory auditor in the General Meeting held on 27.10.2004.

4. Secondly, the decision in ***Basant Ram & Sons*** *(supra)* does not help the cause of the petitioner inasmuch as that was a case where the removal was sought on the basis of a General Meeting held prior to the approval taken from the Central Government. The court observed that there was no statutory bar on a prior meeting being held, wherein the share-holders or the members approve the resolution for making the application to seek the previous consent of the Central Government. It was held that the Board of Directors were not

authorised to remove the statutory auditors prior to expiry of its term except under the procedure provided under Section 224 (7) of the said Act. The facts of the present case are entirely different. The decision that was taken on 12.07.2004 at the Board Meeting had no effect until and unless prior approval of the Central Government and subsequent confirmation in the General Meeting was granted. The decision of 12.07.2004 was only for the purpose of moving the application before the Central Government for grant of approval to remove the statutory auditors. Unless a decision is taken in the Board Meeting, the company cannot act on its own and it is only to this effect that the decision of the Board Meeting can be viewed. Unlike the case in ***Basant Ram*** *(supra)*, in the present case, the General Meeting was held subsequent to the approval granted by the Central Government. Therefore, the present case is entirely distinguishable from that of ***Basant Ram*** *(supra)*.

5. In these circumstances, this petition is dismissed.

BADAR DURREZ AHMED
(JUDGE)

March 08, 2007
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